

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Department of Employment Services**

**VINCENT C. GRAY**  
**MAYOR**



**LISA MARÍA MALLORY**  
**DIRECTOR**

**COMPENSATION REVIEW BOARD**

**CRB No. 11-099(A)**

**In Re: Application for Approval of an Attorney's Fee Assessment**

**EVELYN M. LYLES,**  
**Claimant,**

**v.**

**D.C. DEPARTMENT OF MENTAL HEALTH,**  
**Employer.**

Jason W. Shoemaker, Esquire, Counsel for Petitioner  
Andrea G. Comentale Esquire, Counsel for Employer

Before MELISSA LIN JONES, JEFFREY P. RUSSELL,<sup>1</sup> *Administrative Appeals Judges*, and LAWRENCE D. TARR, *Chief Administrative Appeal Judge*.

MELISSA LIN JONES, *Administrative Appeals Judge*, on behalf of the Compensation Review Board.

**ORDER DENYING AN ATTORNEY'S FEE**

This matter is before the Compensation Review Board ("CRB") on Jason W. Shoemaker, Esquire's December 17, 2012 Application for Attorney's Fees pursuant to D.C. Code §1-623.27 and 7 DCMR §§224 and 269. Mr. Shoemaker's fee application seeks an award of \$20,000.00 for legal services rendered before the CRB commencing on September 19, 2011.

On April 16, 2009, Ms. Evelyn M. Lyles filed a claim for emotional injuries allegedly sustained as a result of work-related stress on January 22, 2009. The Disability Compensation Program<sup>2</sup> denied Ms. Lyles' claim for disability compensation benefits.

Administrative Law Judge ("ALJ") Belva D. Newsome presided over a formal hearing to adjudicate Ms. Lyles' entitlement to wage loss and medical benefits. On October 21, 2010, ALJ Heather C. Leslie issued a Show Cause Order directing the parties to show cause why the case could not be

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<sup>1</sup> Judge Russell has been appointed by the Director of the Department of Employment Services ("DOES") as a temporary Compensation Review Board ("CRB") member pursuant to DOES Administrative Policy Issuance No. 12-01 (June 20, 2012).

<sup>2</sup> Effective October 1, 2010, the Disability Compensation Program's name was changed to the Public Sector Workers' Compensation Program.

assigned to another ALJ for resolution; neither party responded to the Show Cause Order, and on November 10, 2010, ALJ Leslie issued a Compensation Order denying Ms. Lyles' claim for relief because the events alleged were based upon Ms. Lyles' "distorted belief system."<sup>3</sup>

On appeal, after acknowledging the "integral function of the fact finder" in assessing credibility, the CRB vacated the finding of no causal relationship, reversed the denial of disability compensation, and remanded the matter for application of the proper analytic framework to the issue of causation:

Thus, we agree with the claimant in this appeal that, in attributing the "current disabling condition" to a reaction to the events in a "distorted belief system", the ALJ has impermissibly failed to adhere to the limited options available in the causal relationship inquiry: are the events or conditions alleged to be the cause of the injury real, on the one hand, or figments of the imagination on the other. If they are real, then the ALJ must determine whether they caused or contributed (by aggravation) to the current, and stipulated, psychological injury.<sup>[4]</sup>

ALJ Leslie issued a Compensation Order on Remand on August 30, 2011. This time, Ms. Lyles' claim for relief was granted, at least in part, because "[a]s with the first Compensation Order, the Undersigned will treat the Claimant's testimony as if it was credible, meaning that the Claimant's testimony was sincere and truthful."<sup>5</sup> Then, having found Ms. Lyles' "testimony sincere and credible, [the ALJ found] that the psychological injury arouse out of and in the course of her employment."<sup>6</sup> Finally, the ALJ applied the presumption of compensability to the issue of whether or not Ms. Lyles alleged injury "could have been caused or aggravated by the work injury."<sup>7</sup>

On appeal to the CRB for the second time, the August 30, 2011 Compensation Order on Remand was vacated because the ALJ did not make a specific credibility finding but merely treated Ms. Lyles' testimony as though it was credible:

Although issuance of the August 30, 2011 Compensation Order on Remand prior to the expiration of the time period allowed for requesting reconsideration of a Decision and Remand Order is not reversible error, the credibility finding in the Compensation Order on Remand is not supported by substantial evidence and is not in accordance with the law. The Compensation Order on Remand is VACATED, and this

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<sup>3</sup> *Lyles v. D.C. Department of Mental Health*, AHD No. PBL09-070A, DCP No. 30090343260-0001 (November 10, 2010).

<sup>4</sup> *Lyles v. D.C. Department of Mental Health*, CRB No. 10-200, AHD No. PBL09-070A, DCP No. 30090343260-0001 (August 23, 2011).

<sup>5</sup> *Id.*

<sup>6</sup> *Lyles v. D.C. Department of Mental Health*, AHD No. PBL09-070A, DCP No. 30090343260-0001 (August 30, 2011).

<sup>7</sup> *Id.*

matter is **remanded** for further proceedings consistent with this Decision and **Remand Order**.<sup>[8]</sup>

Another Compensation Order on Remand issued on August 22, 2012. In this Compensation Order on Remand, Ms. Lyles was awarded “wage loss and medical benefits from January 22, 2009 to the present and continuing, causally related medicals and interest.”<sup>9</sup>

The August 22, 2012 Compensation Order on Remand was not appealed. As a result, the CRB’s June 20, 2012 Decision and Remand Order became final on September 24, 2012.

Less than 90 calendar days later on December 17, 2012, Mr. Shoemaker filed an Application for Attorney’s Fees requesting an award of \$20,000 for his legal services provided before the CRB in conjunction with the appeal of the August 30, 2011 Compensation Order on Remand. In response to the CRB’s December 21, 2012 Order to Show Cause Re: Application for an Attorney Fee Assessment, Employer filed Employer-Petitioner’s Response to Order to Show Cause and Opposition to Claimant’s Application for Attorney’s Fees asserting Mr. Shoemaker was not successful in the second appeal before the CRB. In Claimant’s Reply to Employer’s Opposition to Application for Attorney’s Fees,<sup>10</sup> Mr. Shoemaker argues that he has achieved a successful prosecution of this matter despite being “unsuccessful in relation to some, piecemeal legal issues.”<sup>11</sup>

In reaching a determination of an appropriate attorneys’ fees award pursuant to the Act<sup>12</sup>, §1-623.27 of the Act states

(a) A claimant may authorize an individual to represent him or her in a request for reconsideration of a decision under §1-623.24(a-4)<sup>[13]</sup> or in a proceeding before an administrative law judge under §1-623.24(b).<sup>[14]</sup>

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<sup>8</sup> *Lyles v. D.C. Department of Mental Health*, CRB No. 11-099, AHD No. PBL09-070A, DCP No. 30090343260-001 (June 20, 2012), p.p. 5-6.

<sup>9</sup> *Lyles v. D.C. Department of Mental Health*, AHD No. PBL09-070A, DCP No. 30090343260-001 (August 22, 2012).

<sup>10</sup> Claimant’s Reply to Employer’s Opposition to Application for Attorney’s Fees was filed with an accompanying Motion for Leave to File Late Reply to Employer’s Opposition to Application for Attorney’s Fees. There is no provision in the regulations to afford a party an opportunity to file a reply to the opposition to a motion; however, given that Employer did not file any objection to Claimant’s Reply to Employer’s Opposition to Application for Attorney’s Fees it has been considered in this request. Nonetheless, the CRB notices the sardonic tone to the Claimant’s Reply to Employer’s Opposition to Application for Attorney’s Fees.

<sup>11</sup> Claimant’s Reply to Employer’s Opposition to Application for Attorney’s Fees, p. 4.

<sup>12</sup> District of Columbia Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code §1-623.1 *et seq.*

<sup>13</sup> §1-623.27(a-4) (1) of the Act states “[a] claimant who disagrees with a decision of the Mayor or his or her designee under subsection (a) of this section shall have the right to request reconsideration of that decision within 30 days after the issuance of the decision. The request shall be written and contain reasonable medical or factual justification for the reconsideration.”

<sup>14</sup> §1-623.27(b) of the Act states

(b) (1) For the purposes of this subsection, the term “successful prosecution” means obtaining an award of compensation that exceeds the amount that was previously awarded, offered, or determined. The term “successful prosecution” includes a reinstatement or partial reinstatement of benefits which are reduced or terminated. (Emphasis added.) (2) If a person utilizes the services of an attorney-at-law in the successful prosecution of his or her claim under §1-623.24(b) or before any court for review of any actions, award, order, or decisions, there shall be awarded, in addition to the award of compensation, in a compensation order, a reasonable attorney’s fee, not to exceed 20% of the actual benefit secured, which fee award shall be paid directly by the Mayor or his or her designee to the attorney for the claimant in a lump sum within 30 days after the date of the compensation order.

The August 30, 2011 Compensation Order on Remand granted Ms. Lyles’ claim for relief. In response to the issuance of that Compensation Order on Remand and importantly for purposes of this fee petition, it was Employer, not Ms. Lyles, that filed an Application for Review with the CRB, and it was Employer, not Ms. Lyles, that was successful in the prosecution of that appeal before the CRB.

Because Ms. Lyles’ attorney was not successful in the prosecution of this matter before the CRB, the CRB is without authority to award him an attorney’s fee for work performed before this tribunal.<sup>15</sup> Mr. Shoemaker’s request for the assessment of an attorney’s fee is DENIED.

FOR THE COMPENSATION REVIEW BOARD:

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MELISSA LIN JONES

*Administrative Appeals Judge*

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February 13, 2013

DATE

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(b) (1) Before review under §1-623.28(a), a claimant for compensation not satisfied with a decision of the Mayor or his or her designee under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on the claim before a Department of Employment Services Disability Compensation Administrative Law Judge. At the hearing, the claimant and the Attorney General are entitled to present evidence. Within 30 days after the hearing, the Mayor or his or her designee shall notify the claimant, the Attorney General, and the Office of Personnel in writing of his or her decision and any modifications of the award he or she may make and the basis of the decision. (2) In conducting the hearing, the representative of the Mayor is not bound by common law or statutory rules of evidence, or by technical or formal rules of procedure, or by the provisions of the District of Columbia Administrative Procedure Act D.C. Code, §2-501 et seq.), except as provided by this subchapter, but may conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, he or she shall receive such relevant evidence as the claimant adduces and such other evidence as he or she determines necessary or useful in evaluating the claim. (3) The Mayor or his or her designee shall begin payment of compensation to the claimant within 30 days after the date of an order from the Department of Employment Services Administrative Law Judge.

<sup>15</sup> Pursuant to 7 DCMR §224.8, a petition for attorney’s fees must be filed before the section of the Department of Employment Services where the legal services were rendered.